IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC., d/b/a WRS MOTION PICTURE LABORATORIES, a corporation, Plaintiff, v. PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, CHARLES von BERNUTH and JOHN HERKLOTZ, Defendants.	)	Civil Action No. 00-2041

ORDER

In this civil action, Plaintiff, WRS, Inc. ("WRS"), sought damages from Defendant John Herklotz ("Herklotz") based on Herklotz's execution of a personal guaranty of the obligations of Defendant Plaza Entertainment, Inc. ("Plaza Entertainment") to WRS. In his answer to WRS's complaint, Herklotz asserted crossclaims against Defendants Plaza Entertainment, Eric Parkinson ("Parkinson") and Charles von Bernuth ("von Bernuth") for indemnity/contribution, breach of fiduciary duty and misrepresentation.

On February 24, 2006, Herklotz filed a motion for summary judgment against WRS. Shortly thereafter, in March 2006, the Honorable Arthur J. Schwab began presiding over the case due to the unavailability of this member of the Court to whom the case was originally assigned. On March 23, 2006, WRS filed a motion for summary judgment on the issue of Herklotz's liability, and the motion was granted by Judge Schwab on July 21, 2006.

On October 13, 2006, WRS moved for summary judgment against Herklotz on the issue of damages. The motion was granted by Judge Schwab on February 20, 2007, and judgment in the amount of $2,584,749.03 was entered in favor of WRS and against Herklotz. On February 20, 2007, Judge Schwab also entered default judgments in the amount of $2,584,749.03 against Plaza Entertainment, Parkinson and von Bernuth as a result of their failure to participate in this litigation following a case management conference on March 9, 2006.

After entry of judgment against Herklotz and entry of default judgments against Plaza Entertainment, Parkinson and von Bernuth, it appeared that the only remaining claims in the case were the crossclaims asserted by Herklotz against Plaza Entertainment, Parkinson and von Bernuth. On February 27, 2007, Judge Schwab held a conference to discuss Herklotz's pending motion to transfer venue to the United States District Court for the Central District of California pursuant to 28 U.S.C. § 1404(a). Following the conference, Judge Schwab entered an order (1) granting an oral motion by Herklotz's counsel to sever the crossclaims asserted against Plaza Entertainment, Parkinson and von Bernuth from the other claims in this case, and (2) granting Herklotz's pending motion to transfer venue with respect to the crossclaims. Based on a reasonable belief that the judgment entered against him on February 20, 2007 was a final judgment, Herklotz filed a Notice of Appeal from the judgment on March 8, 2007.

Subsequently, a question arose concerning the finality of the judgment from which Herklotz had appealed. Specifically, it appeared that the judgment was not final because a separate order entering judgment in favor of WRS and against Herklotz had not been filed in accordance with Fed.R.Civ.P. 58. To eliminate any question concerning the finality of the judgment against Herklotz and the jurisdiction of the United States Court of Appeals for the Third Circuit to consider his pending appeal, on November 2, 2007, WRS filed a motion under Fed.R.Civ.P. 54(b) seeking certification, *nunc pro tunc*, that the entry of judgment against Herklotz on February 20, 2007 was final.

On February 8, 2008, Judge Schwab filed a Memorandum Opinion and Order granting WRS's Rule 54(b) motion. In summary, Judge Schwab concluded that (a) WRS's claim against Herklotz based on his personal guaranty of Plaza Entertainment's obligations to WRS was a cognizable claim for relief, (b) the judgment entered against Herklotz on February 20, 2007 was final in the sense that the judgment completely resolved the only claim asserted by WRS against Herklotz in this case, (c) there were no just reasons for delay in certifying the judgment against Herklotz as final under Fed.R.Civ.P. 54(b), and (d) the equities involved in the case weighed heavily in favor of certifying the judgment against

Herklotz as final under Fed.R.Civ.P. 54(b) (*i.e.*, Herklotz had been defending against WRS's claim in this case for over seven years; Herklotz is in his 80's and his health is deteriorating; and, if the judgment against Herklotz was not certified as final and he was precluded from obtaining appellate review at the time, it was very likely that he would be compelled to suffer yet another delay in bringing this litigation with WRS to an end because Plaza Entertainment, Parkinson and von Bernuth had filed motions under Fed.R.Civ.P. 60(b) seeking relief from the default judgments due to their abandonment by counsel). On February 8, 2008, Judge Schwab also entered a separate judgment in favor of WRS and against Herklotz in accordance with Fed.R.Civ.P. 58.

Thereafter, on February 29, 2008, the case was re-assigned to this member of the Court for all further proceedings. Herklotz has filed a motion for modification of the final judgment entered by Judge Schwab on February 8, 2008 to expressly provide that the entry of final judgment against him was effective as of February 20, 2007. (Document No. 195). After consultation with Judge Schwab, the motion will be granted.

AND NOW, this 31st day of March, 2008, it is hereby ORDERED as follows:

1. The motion of Defendant John Herklotz for *nunc pro tunc* certification pursuant to Fed.R.Civ.P. 54(b) (Document No. 195) is GRANTED.

2. The final judgment entered in favor of WRS and against Herklotz by Judge Schwab on February 8, 2008 is modified to the following extent: The entry of final judgment in favor of WRS and against Herklotz in the amount of $2,584,749.03 is effective as of February 20, 2007.

William L. Standish
William L. Standish
United States District Judge

cc: Thomas E. Reilly, Esquire
John P. Sieminski, Esquire